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To: Piu Ghosh, Planning Manager, City of Cupertino

Re: City Council/Planning Commission Housing Element Study Session #2

Date: May 3, 2021

Introduction

This memo provides background context and information on the General Plan Housing Element update process in preparation for the upcoming City Council/Planning Commission joint Housing Element Study Session on May 11, 2021. Building on study session #1 conducted on April 27[1], this session will provide participants with an opportunity to learn about and discuss:

1) Requirements and strategies for meeting the City's Regional Housing Need Allocation (RHNA) for the upcoming 2023-2031 planning period;
2) Best practices in housing element policies and programs;
3) Potential local housing strategies for Cupertino.

General Background

The Housing Element is part of Cupertino's General Plan and identifies policies and programs to meet the housing needs of the city's current and future residents. State law (Government Code Sections 65580-65589.8) requires that every city and county in California adopt a Housing Element, approximately every eight years. In addition, the State Department of Housing and Community Development (HCD) reviews and determines whether each Housing Element meets all the requirements of the law. Cupertino's previous Housing Element was adopted in 2015 and the new document must be adopted by January 2023.

This Housing Element update process is expected to be more time intensive and rigorous than previous cycles for several reasons. First, as displayed below, Cupertino's proposed Regional Housing Needs Allocation (RHNA) is significantly higher than last cycle: 4,588 total units compared to 1,064 total units. Also, because of changes in State law, it may be harder to identify sites that can count towards meeting the RHNA. There are also other new rules, such as Affirmatively Furthering Fair Housing AFFH), which are in effect for the first time this cycle. As described in the staff report for the April 27th joint study session, AFFH will require, amongst other things, that sites suitable for 1,884 lower income units not be concentrated in areas of low opportunity or which are racially segregated.

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[1] Agenda materials and a recording of the session are available on the City's website:
https://cupertino.legistar.com/MeetingDetail.aspx?ID=857469&GUID=B75D5783-2830-484C-9DB2-54078D71E18D&Options=info|&Search=

Table 1: Illustrative RHNA for Cupertino, Santa Clara County and the Bay Area, January 2021

Income Group	Cupertino Units	Santa Clara County Units	Bay Area Units	Cupertino Percent	Santa Clara County Percent	Bay Area Percent
Very Low Income (<50% of AMI)	1193	32316	114442	26.0%	24.9%	25.9%
Low Income (50%-80% of AMI)	687	18607	65892	15.0%	14.4%	14.9%
Moderate Income (80%-120% of AMI)	755	21926	72712	16.5%	16.9%	16.5%
Above Moderate Income (>120% of AMI)	1953	56728	188130	42.6%	43.8%	42.6%
Total	4588	129577	441176	100.0%	100.0%	100.0%

Source: Association of Bay Area Governments Methodology and tentative numbers were approved by ABAG's Executive board on January 21, 2021 (Resolution No. 02-2021). The numbers were submitted for review to California Housing and Community Development in February 2021, after which an appeals process will take place during the Summer and Fall of 2021. THESE NUMBERS SHOULD BE CONSIDERED PRELIMINARY AND SUBJECT TO CHANGE PER HCD REVIEW

Since the overall Housing Element structure and components were presented for the initial study session on 4/27, the following information focusses specifically on policies and programs, including new State law requirements and potential strategies for providing adequate sites to meet Cupertino's RHNA for 2023-2031. Where applicable, the below narrative provides references to policies and programs in the currently adopted Housing Element[2].

I.   Housing Policy and Program Requirements

According to HCD, the Housing Element Policies and Programs should consist, at minimum, of the following required types of policies and programs[3]:

Programs to Provide Adequate Sites
The core of the Housing Element is the identification of housing development sites suitable for accommodating the full range of housing needs and types during the planning period[4]. Specific policies and programs related to sites include:

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[2] https://www.cupertino.org/home/showdocument?id=12736

[3] The full HCD Completeness Check List can be found here: https://www.hcd.ca.gov/community-development/housing-element/docs/housing%20element%20completeness%20checklist.pdf

[4] Detailed guidance on the sites inventory and related policies is provided by HCD in this Guidebook: https://www.hcd.ca.gov/community-development/housing-element/docs/sites_inventory_memo_final06102020.pdf

- *Large sites larger than 10 acres and small sites less than 0.5 acres.* State law provides that these sites are not assumed to be suitable for accommodating lower income housing unless a site of that size was successfully developed in the prior planning period or there is other evidence that the site can be developed as lower income housing. That evidence might include proactive polices to facilitate development, such as regulatory or financial incentives, or other strategies as detailed below. For small sites, the City already has adopted policies in the current Housing Element related to lot consolidation and flexible development standards. The site for the 19-unit very low-income Veranda project was slightly larger than 0.5 acre (0.55 acre). (HE-1.3.3 and HE-1.3.4).

- *Non-vacant mixed-use sites* (for example existing underutilized commercial properties that could be redeveloped during the planning period). The City must justify the development potential assumed for these sites, including the extent to which existing uses might be a barrier to redevelopment, the City's past experience building residences on non-vacant sites, market demand, lease terms, and regulatory and other incentives. As with small and large sites, relevant policies could include either regulatory or financial incentives to assist property owners and developers during the planning period.

  In addition, the Element needs to explain why nonvacant sites identified in the previous Housing Element planning period were not developed and, if appropriate, could include a specific program for providing financial or regulatory incentives to support their development. If over one-half of the City's lower income RHNA need is accommodated on non-vacant sites, the existing use is presumed to impede additional development unless the City has substantial evidence that the existing use is likely to be discontinued during the eight-year planning period.

- *Reuse of previously identified non-vacant sites.* Non-vacant sites identified in the current Housing Element *(2015-2023)* will need to be rezoned to be developable "by right" if the City desires to use them to accommodate the City's lower-income RHNA for the upcoming planning period. According to HCD, "by right" means, in summary, that, if the project does not require a subdivision and includes at least 20 percent of the base density as affordable for lower income housing, the project is exempt from the California Environmental Quality Act, and the City shall not require:
  - A conditional use permit
  - A planned unit development permit
  - Other discretionary, local-government review or approval that would constitute a "project" as defined in Section 21100 of the Public Resources Code (CEQA)

  The City's "by right" ordinance may, however, provide that "use by right" does not exempt the use from design review, so long as the design review does not constitute a "project" under CEQA.

For previously identified sites where the City has already approved a project, the City can only obtain RHNA credit for the affordability actually included in the approved project.

- *Vacant sites Identified in the Previous Two Housing Elements (2007-2014 and 2015-2023).* Vacant sites, identified in both of the previous two Housing Element updates (cycles 4 and 5), must be developable "by right" if used to accommodate lower income housing.

- *Publicly owned sites*. Surplus sites owned by either the City or other public sector entities can also be a key element of the adequate sites strategy, as already recognized by the City's currently adopted Housing Element in Policy HE-2.3.5.

- *Program to accommodate a shortfall of adequate sites to accommodate the RHNA.* If the site inventory does not show enough sites zoned to accommodate the City's RHNA at all income levels, the Housing Element will need to include a program to rezone sufficient sites within three years to accommodate the RHNA at all income levels. If the City completes the zoning after the adoption of the Housing Element, sites designated for lower income housing will need to permit "by right" development. However, "by right" zoning is not required if the zoning is completed in advance of housing element adoption.

- *Program for Addressing No-Net Loss Requirements.* The No Net Loss Law (Government Code section 65863) requires adequate sites be maintained *throughout* the planning period to accommodate the remaining RHNA by income category. If a project is proposed on a site designated for lower income housing where fewer lower income units are proposed than shown in the City's housing element, the City must demonstrate that adequate sites remain to accommodate the City's lower income needs. If there are inadequate remaining sites, the City must upzone another site within 180 days. The City cannot deny the project merely because the project does not include the number of affordable units projected.

  For instance, if a site is shown in the housing element to accommodate 100 lower income units, but a project is proposed that only meets the City's 20 percent BMR requirement, the City would need to verify that adequate sites remain for lower income housing despite the loss of capacity of 80 units. For this reason, the City may want to identify a "buffer" of sites in excess of its RHNA that could accommodate lower income housing, given the likelihood that not all sites designated for lower income housing will be developed with 100 percent affordable projects. HCD recommends a buffer of at least 20 to 30 percent.

Program(s) to assist in the development of housing to accommodate extremely low, very-low, low or moderate-income households, including special needs populations.

The current Housing Element includes these types of policies and programs under Goal HE-2, Housing for a Diversity of Cupertino Households. Key types of programs include financial assistance for developers of affordable housing, as well as a variety of regulatory policies to facilitate and streamline development for housing serving lower-income households. Cupertino policies include allowing waivers for park land dedication fees for affordable housing units, as a financial incentive to developers.

Programs to address governmental and nongovernmental constraints to the maintenance, improvement, and development of housing.

As discussed in the previous briefing session, the Housing Element must include a thorough analysis of both governmental and non-governmental constraints and also set forth proactive policies for addressing these identified constraints. For example, if permit processing time is identified as a constraint to housing development, a program must be included to address this constraint through process improvements that result in shorter permit processing times.

Program(s) to conserve and improve the condition of the existing affordable housing stock.

Largely included under Goal HE-3 of the current Housing Element, these might, for example, include maintenance and repair programs for lower-income homeowners or the acquisition/rehabilitation of existing rental housing.

Program(s) to promote and affirmatively further fair housing opportunities.

In 2018, California adopted new requirements for jurisdictions to Affirmatively Further Fair Housing (AFFH). While it has long been illegal for cities to discriminate based on race, ethnicity, religion, familial status (families with children), or other protected categories, the AFFH rules go further and require that cities actively work to dismantle the legacy of segregation and to create equal housing opportunities. The State recently released new guidance on AFFH[5] for cities to address fair housing issues proactively through new policies and programs. This should include a plan so that new housing is not disproportionately put in low-income communities of color, and also to identify suitable sites for low-income housing that are in service- and transit-rich environments.

Program(s) to preserve units at-risk of conversion from affordable to market-rate rents.

The current Housing Element includes a policy for assisting in the preservation of at-risk affordable housing HE-3.3.2. For this coming update, the City will once again need to assess housing developments in Cupertino with expiring affordability restrictions in the next 10 years and develop programs and policies for preserving these units, if any. In addition, as

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[5] https://www.hcd.ca.gov/community-development/affh/docs/affh_document_final_4-27-2021.pdf#page=7

appropriate, the City may wish to evaluate the loss of non-deed restricted "naturally occurring" affordable housing that may be lost during the planning period.

Program(s) to incentivize and promote the creation of accessory dwelling units (ADUs).

The development of ADUs has been one of the non-sites strategies for meeting Cupertino's RHNA in past Housing Element update rounds (See Policy HE-1.3.2), and it is anticipated that with the implementation of the recent changes to state law, that ADU production will increase significantly in the next Housing Element production period. The City must include a program to incentivize the production of affordable ADUs in the housing element.

II.   Housing Policy Best Practices

Moving beyond the minimum requirements of the Housing Policies and Programs section, there are a variety of best practices from other California jurisdictions that Cupertino may consider in developing new and improved housing strategies for the upcoming update. HCD has identified a number of exemplary Housing Elements from previous planning rounds, as well as a set of best practices that Cupertino may consider in crafting locally appropriate Housing Strategies[6]. Baird and Driskell have reviewed these examples, as well as recently certified Housing Elements in Southern California to identify potential best practice policies and programs that may be applicable to Cupertino. Although not exhaustive of best practices across all types of policies and programs, Baird and Driskell have identified two major types of policies that may be particularly applicable to Cupertino, divided into two major categories:

- Regulatory/Process Improvement Programs and Policies
- Funding Programs and Policies

Regulatory and Process Improvements

As discussed in the previous briefing session, the role of local jurisdictions in California is not to build housing directly, but rather to plan and zone for an adequate supply of sites to accommodate housing need. As such, planning and zoning regulations, standards, and processes are perhaps the first area of improvement that cities can look to in in developing proactive strategies to accommodate housing. Best practices from other jurisdictions in California include[7]:

Streamlining the Approval Process
- Provide clear and objective regulations and guidelines to prospective applicants so that proposed projects conform to local priorities and goals
- Consider "by right" approvals and form-based codes for designated uses
- Provide streamlined permitting review processes for affordable housing. For example, the city of San Diego has adopted a program that provides that 100% affordable housing will be processed 50% faster or *"Expressed,"* without additional express processing fees[8].

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[6] https://www.hcd.ca.gov/community-development/housing-element/award-winning.shtml

[7] The following bulleted text is taken from this Best Practices guide available on the HCD website: https://www.hcd.ca.gov/community-development/building-blocks/docs/housing_element_policy_best_practicesv1022114.pdf

[8] https://www.sandiego.gov/sites/default/files/dsdib538.pdf

Flexibility in Planning Requirements

- Encourage mixed-use zones: mixed-use zones create flexible investment opportunities for, and locate, infill housing in office or retail districts where it may be less controversial. It also has the added benefit of reducing housing development costs by sharing amenities and parking with other uses.
- Let infill developers meet open space and parkland requirements by paying "in-lieu" fees
- Establish minimum density requirements to ensure guaranteed production of certain number of units to meet RHNA requirements
- Maximize development potential through the removal of, or significantly increasing, building height restrictions in designated Priority Development Areas
- Limit requirement for ground-floor retail to key nodes, and allow for residential uses on the ground floor in certain locations within designated Priority Development Areas

Model Policies and Programs

City of Pasadena Housing Element 5th Cycle, Section E3: Entitlement Process
https://www.cityofpasadena.net/wp-content/uploads/sites/30/Adopted-Housing-Element-2014-02-04.pdf?v=1620152191043

City of San Diego Housing Element 6th Cycle, Objective B, Policies H.E. B-1- B.6: Implement Permitting Processing Improvements
https://www.sandiego.gov/sites/default/files/he-print-view-smaller.pdf

Funding Policies and Programs

Cupertino already provides support to affordable programs through the Below Marker Rate (BMR) Affordable Housing Fund (AHF), and other programs as identified in policies HE-2.3.3 and HE-2.3.4 of the currently adopted Housing Element. There are, however, a number of other funding and financing tools the City may wish to consider for the upcoming update in order to augment the City's locally controlled resources for supporting housing development. Supplementing the City's residential and commercial linkage fee program, new sources of support for the Affordable Housing Fund might for example include:

- Private-Sector/Employer donations/support for specific programs
- Transient occupancy tax (requires two thirds vote)
- Real estate transfer tax (requires two thirds vote)
- General obligation bond (requires two thirds vote)
- County and/or other public sector agency funding

More information on potential sources of support for local housing trust funds, can be found at the following sites:

- Housing Trust Fund Project
  https://housingtrustfundproject.org/htf-elements/revenue-sources/

- National Housing Conference
  https://nhc.org/policy-guide/housing-trust-funds-the-basics/
  HCD Local Housing Trust Fund Grant Program
- https://www.hcd.ca.gov/grants-funding/active-funding/lhtf.shtml

The potential uses of local housing trust funds monies are numerous, but one program type that may be of potential interest to Cupertino is the land assemblage program adopted by the City of Pasadena through which the city issues RFPs for the development of affordable housing when $5 million in uncommitted funds are available. Pasadena, like Cupertino, has high land costs, so this policy would also direct staff to "examine creative partnerships and mechanisms for land assemblage and write downs[9]."

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[9] See Program #14, Page 29. https://www.cityofpasadena.net/wp-content/uploads/sites/30/Adopted-Housing-Element-2014-02-04.pdf?v=1620156128981